

Assembly Bill No. 845

Passed the Assembly September 2, 2003

Chief Clerk of the Assembly

Passed the Senate August 27, 2003

Secretary of the Senate

This bill was received by the Governor this _____ day of
_____, 2003, at _____ o'clock __M.

Private Secretary of the Governor

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CHAPTER _____

An act to amend Sections 5102, 5111, 5133, 5311, and 5316 of, to add Sections 5142, 5143, and 5317.5 to, and to add Article 5.4 (commencing with Section 5243) to Chapter 7 of Division 2 of, the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 845, Vargas. Household goods carriers.

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including transportation companies. Household goods carriers are subject to the jurisdiction and control of the commission under the Household Goods Carriers Act. The act prohibits a household goods carrier from engaging, or attempting to engage, in the business of the transportation of used household goods and personal effects, by motor vehicle over any public highway in the state, without a permit issued by the commission. The act declares that it is not to be construed as a regulation of interstate or foreign commerce, except as permitted under the United States Constitution and the acts of Congress.

This bill would prohibit a household goods carrier from engaging, or attempting to engage, in the business of the transportation of used household goods and personal effects, by motor vehicle over any public highway in the state, including advertising, soliciting, offering, or entering into an agreement, without a permit issued by the commission authorizing transportation entirely within the state, or a valid operating authority issued by the Federal Motor Carrier Safety Administration, for interstate transportation. A household goods carrier without a permit issued by the commission or a valid operating authority issued by the Federal Motor Carrier Safety Administration, would be prohibited from enforcing any security interest or bringing an action to recover any money, property, or other relief from any consignor, consignee, or owner of household goods or personal effects for services rendered, and any person utilizing the services of an unpermitted and unauthorized household goods carrier would be authorized to bring an action to recover all compensation paid to the household goods carrier. The



operation of a motor vehicle without a permit or authorization would constitute a public nuisance under the bill. The bill would instead declare that the act is not to be construed as a regulation of interstate or foreign commerce, except as not prohibited under the United States Constitution and the acts of Congress.

This bill would, with certain exceptions, permit a household goods carrier a lien on used household goods and personal effects to secure payment for transportation and additional services ordered by the consignor, as defined. The existence and amount of the lien would be conditioned upon providing the consignor with a specified notice that clearly and conspicuously specifies the dollar amount for transportation and additional services, which amount is required to be estimated in good faith based upon the specific circumstance and to be just and reasonable, and would prohibit the dollar amount from being preprinted on the notice. Upon tender to the household goods carrier of the amount specified in the notice, the lien would be extinguished and the household goods carrier would be required to release all household goods and personal effects to the consignee, as defined. The bill would authorize any person injured by a violation of these requirements to bring an action for recovery of the greater of \$1,000 or actual damages, injunctive or other equitable relief, reasonable attorney's fees and costs, and exemplary damages of not less than three times the amount of actual damages for a willful violation.

This bill would prohibit a household goods carrier from transporting household goods under a subhauling agreement unless the agreement is with another licensed household goods carrier and the household goods carrier and subhauler are jointly and severally liable for any loss or damage caused by the subhauler. The bill would require the commission to make any rules and regulations necessary to enforce these requirements. The bill also would make a technical, nonsubstantive change.

(2) Under the Household Goods Carriers Act, a household goods carrier and every officer, director, agent, or employee who violates or fails to comply with the act or an order, decision, rule, regulation, direction, demand, or requirement of the commission, is guilty of a misdemeanor, punishable by fine of not more than \$1,000 or by imprisonment in the county jail for not more than 3



months, or both. The act provides that the penalties accruing under the act are cumulative.

Because a violation of the Household Goods Carriers Act or an order of the commission is a crime under existing law, the bill would impose a state-mandated local program by expanding a crime. The bill would make a willful violation punishable by fine of not more than \$10,000 or imprisonment in the county jail for not more than one year, or both. The bill would make a violation of the above described provision requiring a household goods carrier to have a permit or authorization, a misdemeanor, punishable by fine of not more than \$10,000 or imprisonment in the county jail for not more than one year, or both. The bill would provide that the remedies and penalties accruing under the act are cumulative.

(3) The Public Utilities Act requires the commission to see that statutes affecting public utilities are enforced and obeyed, and that violations are promptly prosecuted and penalties to the state are recovered and collected. The act requires that upon request by the commission, the Attorney General or a district attorney aid the commission in any investigation, hearing, or trial under the act and authorizes the Attorney General or a district attorney to institute and prosecute actions for the enforcement of constitutional and statutory provisions pertaining to public utilities.

This bill would require the commission to ensure that the Household Goods Carriers Act is enforced and obeyed, and that violations are promptly prosecuted and penalties to the state are recovered and collected. Upon request by the commission, the bill would authorize the Attorney General or a district attorney to aid the commission in any investigation, hearing, or trial under the Household Goods Carriers Act and authorizes the Attorney General, a district attorney, or city attorney to institute and prosecute actions for the violation of any law involving the transportation of household goods and personal effects.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.



The people of the State of California do enact as follows:

SECTION 1. Section 5102 of the Public Utilities Code is amended to read:

5102. The use of the public highways for the transportation of used household goods and personal effects for compensation is a business affected with a public interest. It is the purpose of this chapter to preserve for the public the full benefit and use of public highways consistent with the needs of commerce without unnecessary congestion or wear and tear upon those highways; to secure to the people just, reasonable, and nondiscriminatory rates for transportation by carriers operating upon the highways; to secure full and unrestricted flow of traffic by motor carriers over the highways that will adequately meet reasonable public demands by providing for the regulation of rates of all carriers so that adequate and dependable service by all necessary carriers shall be maintained and the full use of the highways preserved to the public; and to promote fair dealing and ethical conduct in the rendition of services involving or incident to the transportation of household goods and personal effects.

SEC. 2. Section 5111 of the Public Utilities Code is amended to read:

5111. This chapter shall not be construed as a regulation of commerce with foreign nations or among the several states, except insofar as such regulation is not prohibited under the provisions of the Constitution and the acts of the Congress of the United States.

SEC. 3. Section 5133 of the Public Utilities Code is amended to read:

5133. (a) No household goods carrier shall engage, or attempt to engage, in the business of the transportation of used household goods and personal effects, by motor vehicle over any public highway in this state, including advertising, soliciting, offering, or entering into an agreement regarding the transportation of used household goods and personal effects, unless the following is satisfied:

(1) For transportation of household goods and personal effects entirely within this state, there is in force a permit issued by the commission authorizing those operations.

(2) For transportation of household goods and personal effects from this state to another state or from another state to this state,



there is in force a valid operating authority issued by the Federal Motor Carrier Safety Administration.

(b) A household goods carrier that engages, or attempts to engage, in the business of the transportation of used household goods and personal effects in violation of subdivision (a) may not enforce any security interest or bring or maintain any action in law or equity to recover any money or property or obtain any other relief from any consignor, consignee, or owner of household goods or personal effects in connection with an agreement to transport, or the transportation of, household goods and personal effects or any related services. A person who utilizes the services of a household goods carrier operating in violation of subdivision (a) may bring an action in any court of competent jurisdiction in this state to recover all compensation paid to that household goods carrier.

(c) The operation of a motor vehicle used in the business of transporting household goods and personal effects by a household goods carrier that does not possess a valid permit or operating authority, as required by subdivision (a), constitutes a public nuisance. Any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, may remove any motor vehicle located within the territorial limits in which the officer may act, when the vehicle is found upon a highway and is being used in a manner constituting a public nuisance. At the request of the commission, the Attorney General, district attorney, city attorney, or county counsel, the law enforcement agency may impound the vehicle for a period not to exceed 72 hours to enable the requesting agency to abate the public nuisance, to obtain an order from the superior court of the county in which the vehicle has been impounded to prevent the use of the motor vehicle in violation of law, and to obtain any other remedy available under law as permitted by Section 5316.

SEC. 4. Section 5142 is added to the Public Utilities Code, to read:

5142. (a) Except as provided in Section 5133, a household goods carrier in compliance with this chapter has a lien on used household goods and personal effects to secure payment of the amount specified in subdivision (b) for transportation and additional services ordered by the consignor. No lien attaches to food, medicine, or medical devices, items used to treat or assist an



individual with a disability, or items used for the care of a minor child.

(b) (1) The amount secured by the lien is the maximum total dollar amount for the transportation of the household goods and personal effects and any additional services (including any bona fide change order permitted under the commission's tariffs) that is set forth clearly and conspicuously in writing adjacent to the space reserved for the signature of the consignor and that is agreed to by the consignor before any goods or personal effects are moved from their location or any additional services are performed.

(2) The dollar amount for the transportation of household goods and personal effects and additional services may not be preprinted on any form, shall be just and reasonable, and shall be established in good faith by the household goods carrier based on the specific circumstances of the services to be performed.

(c) Upon tender to the household goods carrier of the amount specified in subdivision (b), the lien is extinguished, and the household goods carrier shall release all household goods and personal effects to the consignee.

(d) Any person having possession or control of household goods or personal effects, who knows, or through the exercise of reasonable care should know, that the household goods carrier has been tendered the amount specified in subdivision (b), shall release the household goods and personal effects upon the request of the consignor or consignee.

(e) Nothing in this section affects any rights, if any, of a household goods carrier to claim additional amounts, on an unsecured basis, or of a consignor or consignee to make or contest any claim, and tender of payment of the amount specified in subdivision (b) is not a waiver of claims by the consignor or consignee.

(f) Any person injured by a violation of this section may bring an action for the recovery of the greater of one thousand dollars (\$1,000) or actual damages, injunctive or other equitable relief, reasonable attorney's fees and costs, and exemplary damages of not less than three times the amount of actual damages for a willful violation.

(g) Any waiver of this section shall be void and unenforceable.

(h) Notwithstanding any other law, this section exclusively establishes and provides for a household goods carrier's lien on



used household goods and personal effects to secure payment for transportation and additional services ordered by the consignor.

(i) For purposes of this section, the following terms have the following meaning:

(1) “Consignor” means the person named in the bill of lading as the person from whom the household goods and personal effects have been received for shipment and that person’s agent.

(2) “Consignee” means the person named in the bill of lading to whom or to whose order the household goods carrier is required to make delivery as provided in the bill of lading and that person’s agent.

SEC. 5. Section 5143 is added to the Public Utilities Code, to read:

5143. (a) For purposes of this section, the following terms have the following meaning:

(1) “Consignor” means the person named in the bill of lading as the person from whom the household goods and personal effects have been received for shipment and that person’s agent.

(2) “Consignee” means the person named in the bill of lading to whom or to whose order the household goods carrier is required to make delivery as provided in the bill of lading and that person’s agent.

(b) Any household goods carrier engaged in the business of transportation of used household goods and personal effects by motor vehicle over any public highway in this state shall provide each consignor with a completed copy of the notice set forth in this section. The notice shall be printed in at least 12-point type, except the title and first two paragraphs which shall be printed in boldface type, and provided to each consignor at least three days prior to the date scheduled for the transportation of household goods or personal effects. If the consignor requests services on a date that is less than three days before the scheduled date for transportation of the household goods or personal effects, the carrier shall provide the notice as soon as practicable, but in no event may the carrier commence any services until the consignor has signed and received a signed copy of the notice. The carrier shall obtain sufficient information from the consignor to fill out the form and shall include the correct maximum amount and a sufficient description of services that will be performed. The carrier shall



retain a copy of the notice, signed by the cosignor, for at least three years from the date the notice was signed by the cosignor.

(c) Any waiver of the requirements of this section is void and unenforceable.

(d) The “Not To Exceed” amount set forth in the notice and the agreement between the household goods carrier and the consignor shall be the maximum total dollar amount for which the consignor may be liable for the transportation of household goods and personal effects and any additional services ordered by the consignor (including any bona fide change order permitted under the commission’s rules and tariffs) and agreed to by the consignor before any goods or personal effects are moved from their location or any other services are performed.

(e) A household goods carrier may provide the notice set forth in this section either as a separate document or by including it as the centerfold of the informational booklet that the household goods carrier is required to provide the consignor under the commission’s tariffs. If the household goods carrier provides the notice as part of the informational booklet, the booklet shall contain a tab that extends beyond the edge of the booklet at the place where the notice is included. The statement “Important Notice” shall be printed on the tab in at least 12-point boldface type. In addition, the statement “Customer Must Read And Sign The Important Notice In The Middle Of This Booklet Before A Move Can Begin” shall be set forth in 14-point boldface type on the front cover of the booklet.

(f) The notice provided the consignor shall be in the following form:

“IMPORTANT NOTICE ABOUT YOUR MOVE

“IT IS VERY IMPORTANT THAT YOU ONLY AGREE TO A
“NOT TO EXCEED” AMOUNT THAT YOU THINK IS A
PROPER AND REASONABLE FEE FOR THE SERVICES
YOU ARE REQUESTING. THE “NOT TO EXCEED”
AMOUNT THIS MOVER IS REQUESTING IS
\$_____ to perform the following services:



“IF YOU DO NOT AGREE TO THE “NOT TO EXCEED” AMOUNT LISTED OR THE DESCRIPTION OF SERVICES, YOU HAVE THE RIGHT TO REFUSE THE MOVER’S SERVICE AT NO CHARGE TO YOU.

“If you request additional or different services at the time of the move, you may be asked to complete a Change Order which will set forth your agreement to pay for additional fees for those newly requested services. If you agree to the additional charges on that Change Order, those charges may be added to the “NOT TO EXCEED” amount set forth above. If you do not agree to the amounts listed in the Change Order, you should not sign it and may refuse the mover’s services.

“A mover cannot refuse to release your goods once you have paid the “NOT TO EXCEED” amount for the transportation of your goods and personal effects and any additional services that you have agreed to in writing. The “NOT TO EXCEED” amount must be reasonable.

“A mover cannot, under any circumstances, withhold food, medicine, medical devices, items to treat or assist a disabled person, or items used for care of a minor child. An unlicensed mover has no right to withhold your goods for any reason including claims that you have not adequately paid for services rendered.

“For additional information or to confirm whether a mover is licensed by the California Public Utilities Commission, please call the Public Utilities Commission toll free at:



insert toll-free number

“I have completed this form and provided the consumer (shipper) with a copy of this notice.

“Signed _____
Dated _____

“I have been provided with a copy of this form.

Signed _____ Dated _____

SEC. 6. Article 5.4 (commencing with Section 5243) is added to Chapter 7 of Division 2 of the Public Utilities Code, to read:

Article 5.4. Subhauling Agreements

5243. No household goods carrier may transport household goods under a subhauling agreement unless each of the following occurs:

(a) The subhauler is licensed by the commission to transport household goods and complies with the requirements of this chapter.

(b) The household goods carrier and subhauler are jointly and severally liable for any loss or damage caused by the subhauler.

5244. The commission shall adopt any rules and regulations it determines to be necessary to enforce the requirements of this article.

5244.5. This article does not apply to a subhauling agreement when the subhauler is not otherwise subject to this chapter for activity related to the subhauling agreement.

SEC. 7. Section 5311 of the Public Utilities Code is amended to read:

5311. (a) Every household goods carrier and every officer, director, agent, or employee of any household goods carrier who violates or who fails to comply with, or who procures, aids, or abets any violation by any household goods carrier of any



provision of this chapter, or who fails to obey, observe, or comply with any order, decision, rule, regulation, direction, demand, or requirement of the commission, or of any operating permit issued to any household goods carrier, or who procures, aids, or abets any household goods carrier in its failure to obey, observe, or comply with any such order, decision, rule, regulation, direction, demand, requirement, or operating permit, is guilty of a misdemeanor, and is punishable by fine of not more than one thousand dollars (\$1,000) or by imprisonment in the county jail for not more than three months, or both. If a violation is willful, each willful violation is punishable by fine of not more than ten thousand dollars (\$10,000) or by imprisonment in the county jail for not more than one year, or both.

(b) Any person who violates subdivision (a) of Section 5133, is guilty of a misdemeanor, and is punishable by fine of not more than ten thousand dollars (\$10,000), by imprisonment in the county jail for not more than one year, or both, for each violation.

SEC. 8. Section 5316 of the Public Utilities Code is amended to read:

5316. All remedies and penalties accruing under this chapter are cumulative to each other and to the remedies and penalties available under any other law, and a suit for the recovery of one remedy or penalty does not bar or affect the recovery of any other remedy, penalty, or forfeiture or bar any criminal prosecution against any person or corporation, or any officer, director, agent or employee thereof, or any other corporation or person, or bar the exercise by the commission of its power to punish for contempt.

SEC. 9. Section 5317.5 is added to the Public Utilities Code, to read:

5317.5. The commission shall ensure that this chapter is enforced and obeyed, and that violations thereof are promptly prosecuted and penalties due the state therefor recovered and collected, and to this end it may sue in the name of the people of the State of California. Upon the request of the commission, the Attorney General or the district attorney of the proper county or city and county may aid in any investigation, hearing, or trial had under this chapter. The Attorney General, a district attorney of the proper county or city and county, or a city attorney may institute and prosecute actions or proceedings for the violation of any law committed in connection with, or arising from, a transaction



involving the transportation of household goods and personal effects.

SEC. 10. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.



Approved _____, 2003

Governor

